



Supervisory Policy Manual

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Establishment of Overseas Banking Subsidiaries: §51A

V.1 - 28.12.01

This module should be read in conjunction with the [Introduction](#) and with the [Glossary](#), which contains an explanation of abbreviations and other terms used in this Manual. If reading on-line, click on blue underlined headings to activate hyperlinks to the relevant module.

Purpose

To set out how the MA will exercise the powers under §51A of the Banking Ordinance to grant approval for the establishment or acquisition of an overseas banking subsidiary

Classification

A statutory guideline issued by the MA under the Banking Ordinance, §7(3)

Previous guidelines superseded

Guideline 10.1 "Establishment of Overseas Banking Subsidiaries: Section 51A of the Banking Ordinance" dated 29.12.93

Application

To all locally incorporated AIs

Structure

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1. Introduction

1.1 Rationale

- 1.1.1 Under §51A(2) of the Banking Ordinance, a locally incorporated AI or any of its locally incorporated holding companies should not establish or acquire, by whatever means, an overseas banking subsidiary¹ without the approval² of the MA.
- 1.1.2 The purpose of §51A is to ensure that the interests of depositors or potential depositors of an AI would not be threatened by the establishment or acquisition of an overseas banking subsidiary.

1.2 Parties requiring approval

- 1.2.1 §51A requires that a locally incorporated AI and its locally incorporated holding companies³, if any, each need to

¹ "Overseas banking subsidiary" means a subsidiary incorporated overseas that may lawfully take deposits from the general public, whether or not:

- in or outside Hong Kong; or
- on current account or otherwise.

² Including the deemed approval under §51A(3) of the Banking Ordinance in respect of any overseas banking corporation which:

- was the subsidiary of an AI or any holding company of the AI prior to 31.12.93; or
- became, not later than three months after 31.12.93, the subsidiary of an AI or of any holding company of the AI where the acts or circumstances by virtue of which such corporation became such a subsidiary occurred substantially before 31.12.93.

³ Including the immediate holding company, intermediary holding companies and ultimate holding company of an AI.



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obtain the MA's approval for the establishment or acquisition of an overseas banking subsidiary.

1.2.2 If, therefore, the overseas banking subsidiary to be established or acquired is to become:

- a subsidiary of an AI that does not have any locally incorporated holding company, only the AI will need to seek the MA's approval;
- a subsidiary of an AI that has one or more holding companies incorporated in Hong Kong, the AI and each holding company will need to seek the MA's approval; or
- a subsidiary of one or more locally incorporated holding companies of an AI and a fellow subsidiary of the AI, only the holding companies will need to seek the MA's approval.

1.2.3 In the case where more than one of the above parties are required to seek the MA's approval, a single application covering all the applicants (i.e. the AI and/or any of its holding companies, as the case may be) should be submitted to the MA. Accordingly references to "applicants" in the following sections should be construed as referring both to single and multiple applicants.

2. Supervisory approach

2.1 Approval procedures

2.1.1 Applicants should contact the MA at an early stage to discuss their intentions for the establishment or acquisition of an overseas banking subsidiary. An application in writing should be submitted to the MA seeking approval under §51A(2).

2.1.2 Applications should be accompanied, inter alia, by the following information:

- the name of the subsidiary;



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- its place of incorporation or establishment;
- the rationale for establishing or acquiring the subsidiary;
- the percentage of the shareholding to be owned or acquired and the proposed ownership structure;
- the cost of acquisition (including any goodwill) or investment and how it will be funded;
- financial information about the subsidiary (e.g. balance sheet, profitability, capital adequacy ratios, etc.);
- the objectives and business strategy of the subsidiary;
- the business plan of the subsidiary (including projected balance sheet and profitability);
- the funding strategy of the subsidiary (including the extent of support from the AI, e.g. by means of injecting capital or issuing guarantees, letters of comfort or other assurances);
- the degree of the applicants' involvement and participation in managing and monitoring the business of the subsidiary, e.g. number of directors representing the applicants to be appointed on its Board of Directors;
- limits, controls and reporting procedures to be established by the applicants over the activities of the subsidiary;
- the management structure (e.g. any specialised committees) and key internal control systems of the subsidiary;
- whether the subsidiary will be subject to the supervision of a banking regulator in its place of incorporation or establishment;



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- evidence that the AI has considered and evaluated all relevant aspects of country risk associated with the proposed overseas subsidiary (see [CR-G-5](#) "Country Risk Management"); and
- details of the supervisory arrangements, in particular any secrecy constraints affecting disclosure of information by the subsidiary and restricting the HKMA's ability to collect information from, or conduct overseas examination of, the subsidiary.

2.1.3 After receiving a formal application, the MA will, as soon as practicable, issue a notice of either approval or objection to the applicants.

2.2 Major considerations in assessment

2.2.1 In deciding whether a notice of approval should be granted under §51A, the MA will usually take the following factors into consideration:

- the financial capacity and ability of the applicants to acquire or hold the overseas banking subsidiary. In particular:
 - the impact on the capital adequacy of the whole banking group will be assessed together with the ability of the applicants to fund the acquisition or establishment of the new subsidiary; and
 - the present financial condition and likely future requirements of the overseas banking subsidiary in terms of possible injections of capital and liquidity will also be considered to ensure that there will not be a drain on the financial resources of the applicants;
- the managerial capacity of the applicants to ensure that the activities of the overseas banking subsidiary are conducted in a prudent and reputable manner. Factors to be taken into account include:



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- the size and nature of the business of the subsidiary;
 - the reputation and standing of the subsidiary;
 - the present or proposed management structure of the subsidiary and the quality of its management;
 - the adequacy of the present or proposed internal control systems within the subsidiary;
 - the reporting lines to the applicants;
 - the monitoring arrangements at the applicants (including the type and frequency of information to be provided by the new subsidiary) and the amount of time to be devoted to such monitoring; and
 - the past experience and skill of the applicants in managing overseas operations; and
- the place of incorporation or establishment of the subsidiary. In particular, the MA will have regard to:
 - whether the subsidiary is located in a country which complies sufficiently with international standards and codes, particularly the 12 key standards and codes for sound financial systems highlighted by the Financial Stability Forum (see subsection 3.5 and Annex A of [CR-G-5](#) “Country Risk Management” for details); and
 - the extent to which the AI has considered whether there are any supervisory arrangements or secrecy constraints which would inhibit effective consolidated supervision by the HKMA, e.g. conducting overseas examination of, and regularly collecting sufficient information from, the subsidiary.

2.3 Notice of objection



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- 2.3.1 The MA may refuse to grant an approval under §51A if it is considered that the interests of depositors or potential depositors of the relevant AI would be threatened by the establishment or acquisition of the overseas banking subsidiary.
- 2.3.2 Where the MA intends to issue a notice of objection, the applicants will be advised of the reasons therefor, prior to issuing the formal notice, in order to allow them to make representations.
- 2.3.3 The formal notice of objection will specify the grounds for the MA's refusal to grant approval.
- 2.3.4 Even where the overseas banking subsidiary is only to be a fellow subsidiary of an AI, the MA may refuse to grant approval to such establishment or acquisition. This would be the case if the MA believes that the interests of depositors or potential depositors of the AI would be threatened by association or affiliation with a fellow subsidiary which has a poor reputation or is financially unsound, or if that subsidiary could put undue financial or managerial strain on the holding company which could jeopardise its ability to support the AI in the future.

2.4 Conditions attached to approval

- 2.4.1 Under §51A(4) of the Banking Ordinance, the MA may at any time attach any conditions to an approval granted under §51A(2) or deemed to have been given under §51A(3). Conditions may be attached:
- when the initial approval to establish or acquire an overseas banking subsidiary is given; or
 - at a subsequent date.
- 2.4.2 Conditions may be attached when the MA is of the view that such conditions are necessary to safeguard the interests of depositors or potential depositors of the relevant AI. In deciding whether to attach conditions, the MA will take into



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account the same factors as those set out in para. 2.2.1 above.

2.4.3 Before the MA attaches conditions to an approval or amends any existing conditions attached to an approval, the proposed conditions and the reasons for them will be discussed with the relevant parties (i.e. the AI and/or any of its holding companies, as the case may be) in order to give them the opportunity to make representations.

2.4.4 When the conditions are finalised, they will be set out in a written notice which also explains why they have been attached or amended.

2.5 Revocation of approval

2.5.1 Under §51A(5) of the Banking Ordinance, the MA may revoke an approval that has been given, or is deemed to have been given under §51A(3), for the establishment or acquisition of an overseas banking subsidiary. In such a case, the relevant parties will not be allowed to continue to maintain the overseas banking subsidiary from the date of revocation.

2.5.2 Such action may be taken when the MA is of the opinion that the interests of depositors or potential depositors of the relevant AI are threatened in some manner. The factors that will cause the MA to form this view are those set out in para. 2.2.1 above. The MA would also take into account whether remedial action taken or to be taken by the relevant parties is a viable alternative to revocation.

2.5.3 Where the MA intends to revoke an approval, the relevant parties will be advised of the reasons therefor in order to allow them to make representations, prior to issuing the formal notice.

2.5.4 The notice will state the grounds for revoking the approval and specify a timeframe within which the relevant parties should dispose of all or part of their shares in the overseas banking subsidiary or, alternatively, take other action so that the overseas banking subsidiary no longer falls within the



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scope of §51A. The latter might involve giving up the overseas banking subsidiary's licence to take deposits and winding down its business activities. The timeframe will be discussed with the relevant parties and, after taking into account the particular circumstances of the case, will be a reasonable and realistic period.

2.5.5 The MA will be prepared to consider the extension of a deadline for the disposal of the subsidiary if it is believed that the relevant parties have made genuine attempts to achieve the disposal but have been unable to find a buyer for the shares within the original deadline.

2.5.6 In certain cases the MA may be prepared to allow the holding company of an AI to acquire or to continue to maintain an overseas banking subsidiary, provided that it is only a fellow subsidiary of the AI. This would apply in those cases where the ownership structure adequately distances the overseas banking subsidiary from the AI.

2.6 Right of appeal

2.6.1 An AI or any of its holding company which is aggrieved by a decision of the MA to refuse to grant an approval may appeal to the Chief Executive in Council under §132A. Similarly, an appeal may be lodged when the MA attaches conditions to, or revokes, an approval.

2.6.2 Nevertheless such refusal, revocation or conditions, as the case may be, should take immediate effect, notwithstanding that an appeal has been made.

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